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6 IN THE UNITED STATES DISTRICT COURT  
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8 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
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10 PAUL JOSEPH MARTINEZ,

No. C 03-3616 WHA (PR)

11 Petitioner,

**DENIAL OF CERTIFICATE OF  
APPEALABILITY**

12 vs.

13 SILVIA GARCIA, Warden,

14 Respondent.  
15 \_\_\_\_\_/

16 This is a habeas case under 28 U.S.C. § 2254 filed pro se by a state prisoner. The  
17 petition was denied on the merits. Petitioner has filed a notice of appeal, a motion for  
18 appointment of counsel, and a motion for a certificate of appealability.

19 A petitioner may not appeal a final order in a federal habeas corpus proceeding without  
20 first obtaining a certificate of appealability (formerly known as a certificate of probable cause to  
21 appeal). *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A judge shall grant a certificate of  
22 appealability "only if the applicant has made a substantial showing of the denial of a  
23 constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy  
24 this standard. *See id.* § 2253(c)(3). "Where a district court has rejected the constitutional  
25 claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner  
26 must demonstrate that reasonable jurists would find the district court's assessment of the  
27 constitutional claims debatable or wrong." *Slack v. McDaniel*, 120 S.Ct. 1595, 1604 (2000).

28 Petitioner's claims could not succeed if the facts were as they were found by the superior  
court after an evidentiary hearing on a state habeas petition. Plaintiff failed to produce any


evidence to overcome the superior court's findings. Given this, the outcome was not debatable by jurists of reason. The motion for a certificate of appealability (doc 21) is **DENIED**.

Petitioner has moved for appointment of counsel on appeal. The motion should be directed to the court of appeals. The motion here (doc 20) is **DENIED**.

The clerk shall transmit the file, including a copy of this order, to the Court of Appeals. See Fed. R.App.P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).<sup>1</sup>

**IT IS SO ORDERED.**

Dated: April 17, 2006.

  
WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Petitioner may then ask the Court of Appeals to issue the certificate, see R.App.P. 22(b)(1), or if he does not, the notice of appeal will be construed as such a request, see R.App.P. 22(b)(2).